

HOUSE BILL NO. 677

INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND INCREASING THE STATE MINIMUM WAGE; CHANGING WAGE REFERENCES FOR AGENCY LIQUOR STORES AND BUSINESS LOAN PROGRAMS; CLARIFYING WAGE REFERENCES FOR CERTAIN STUDENT JOBS; PROVIDING FOR AN ANNUAL INFLATION ADJUSTMENT OF THE STATE MINIMUM WAGE; ELIMINATING RULEMAKING AUTHORITY FOR A STATE MINIMUM WAGE; AMENDING SECTIONS 16-2-101, 17-6-317, 17-6-318, 20-25-708, AND 39-3-404, MCA; REPEALING SECTION 39-3-409, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement -- kinds and prices of liquor. (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate and less the agency liquor store's weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state

discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) Agency liquor stores must receive commissions payable as follows:

(a) (i) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or

(ii) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus

(b) for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

(i) for agency liquor stores with a volume of sales of \$500,000 or more, ~~0.125% beginning July 1, 2002, 0.5% beginning July 1, 2003, and 0.875% beginning July 1, 2004;~~

(ii) for agency liquor stores with a volume of sales of less than \$500,000, ~~1.25% beginning July 1, 2002, 1.25% beginning July 1, 2003, and 1.5% beginning July 1, 2004;~~ or

(iii) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(b)(i) or (4)(b)(ii), for each store in the city, an addition to its commission rate equal to the increase granted the store with the lowest commission rate.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and must be renewed at the existing commission rate for additional 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

1 (i) declare the department as an additional insured; and

2 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from
3 or in connection with the agent's negligent acts or activities in the execution and performance of the agency
4 franchise agreement.

5 (c) provide that upon termination by the department for cause or upon mutual termination, the agent
6 is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the
7 department may immediately repossess all liquor inventory, wherever located.

8 (d) specify the reasonable service and space requirements that the agent will provide throughout the
9 term of the agency franchise agreement.

10 (6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may
11 be reviewed on July 1, 1998, and every succeeding 3 years at the request of either party. If the agent concurs,
12 the department may adjust the commission percentage to be paid during the remaining term of the agency
13 franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term
14 of the agency franchise agreement, to a commission percentage that is equal to the average commission
15 percentage being paid agents with similar sales volumes if:

16 (i) the agent's commission percentage is less than the average; and

17 (ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

18 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the
19 average commission paid agents with similar sales volume:

20 (i) if the agent demonstrates that:

21 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
22 limited to increases in the ~~federally established~~ minimum wage provided for in 39-3-404 or escalation in
23 prevailing rent; and

24 (B) the average commission percentage is insufficient to yield net income commensurate with net
25 income experienced before the cost increases occurred; and

26 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified
27 in the agent's franchise agreement that will eliminate the impact of cost increases.

28 (7) The liability insurance requirement may be reviewed every 3 years ~~after July 1, 1995~~, at the request
29 of either the agent or the department. If the agent concurs, the department may adjust the requirements to be
30 effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the

1 state from risks associated with the agent's negligent acts or activities in the execution and performance of the
2 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
3 requirements of the department of administration.

4 (8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily
5 performed the requirements of the agency franchise agreement because the agent:

6 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons
7 who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount
8 provided for in 16-2-201 to persons who hold liquor licenses;

9 (ii) fails to maintain sufficient liability insurance;

10 (iii) has not maintained a quantity and variety of product available for sale commensurate with demand,
11 delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase
12 special orders;

13 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
14 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose
15 of making purchases of liquor; or

16 (v) fails to comply with the express terms of the agency franchise agreement.

17 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise
18 agreement for cause and specify the unmet requirements. The agent may contest the termination and request
19 a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its
20 termination order until after a final decision has been made pursuant to the Montana Administrative Procedure
21 Act.

22 (c) In the case of failure to make timely payments to the department for liquor purchased, the
23 department may terminate the agency franchise agreement and immediately repossess any liquor purchased
24 and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the
25 termination and request a hearing within 30 days of the department's repossession of the liquor. The agency
26 liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the
27 Montana Administrative Procedure Act.

28 (9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the
29 department.

30 (10) An agent may assign an agency franchise agreement to a person who, upon approval of the

department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(11) A person or entity may not hold an ownership interest in more than one agency liquor store.

(12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 2. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions -- rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in ~~39-3-409~~ 39-3-404, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 3. Section 17-6-318, MCA, is amended to read:

"17-6-318. Job credit interest rate reduction for business loan participation. (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created to employ a Montana resident. A borrower who uses the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the

proceeds of the loan for which the salary or wage is less than the minimum wage provided for in ~~39-3-409~~
39-3-404.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence
of the creation of jobs and shall make a written application to the board through its financial institution or, in the
case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board."

Section 4. Section 20-25-708, MCA, is amended to read:

"20-25-708. Approval of salaries. The salaries paid to students employed under ~~this~~ the work-study
program and the number of hours each student works ~~shall~~ must be approved by institution officers
administering the program, subject to guidelines promulgated by the board of regents of higher education;
~~provided that in no case will any.~~ A student employed under the program may not be paid less than the minimum
wage as provided by ~~law~~ the Fair Labor Standards Act of 1938, 29 U.S.C. 206."

Section 5. Section 39-3-404, MCA, is amended to read:

"39-3-404. Minimum wage. (1) (a) Except as provided in 7-32-4116, 7-33-4128, 13-4-106, 20-20-107,
23-1-313, 53-20-164, and 53-21-167 and as otherwise provided in this part and except for farm workers as
provided in subsection (2) of this section, every employer shall pay to each ~~of his employees~~ employee a wage
of not less than ~~the applicable minimum wage as determined by the commissioner in accordance with 39-3-409~~
an hourly amount determined by dividing an annual income base, as provided in subsection (1)(b) of this section,
by 2,080 and adjusting for inflation as provided in subsection (1)(c) of this section.

(b) The annual income base is \$16,640.

(c) Starting July 1, 2006, the department of labor and industry shall adjust the income base provided
in subsection (1)(b) by the following formula, where the adjusted base = $B + B[(W2-W1)/W1]$ and:

(i) B = the base described in subsection (1)(b);

(ii) W1 = CPI-W (the consumer price index, U.S. city average, all items, for urban wage earners and
clerical workers) for the calendar year immediately prior to the last calendar year; and

(iii) W2 = CPI-W of the last calendar year.

(2) (a) In the case of a farm worker employed for a part of a calendar year which that includes periods
requiring working hours in excess of 8 hours per a day and other seasonal periods requiring working hours

1 substantially less than 8 hours ~~per a~~ day, the employer may pay the worker at a fixed rate of compensation
2 during the term of employment. The employer may elect to: ~~pay an employee under subsection (2)(b) or (2)(c).~~

3 ~~(a)(b) The employer may~~ keep a record of the total number of hours worked by the worker during the
4 part of the year during which the worker was employed by ~~him the employer.~~ ~~(the The~~ total wages paid by ~~such~~
5 ~~the~~ employer to ~~such the~~ employee for that part of the year during which ~~said the~~ employee was employed by
6 ~~him shall the employer may~~ not be less than the applicable minimum wage rate multiplied by the total number
7 of hours ~~so worked); or.~~

8 ~~(b)(c) in~~ In lieu of the minimum wage set forth ~~herein in subsection (1), the employer may~~ pay the farm
9 worker a monthly wage as ~~herein defined on a monthly basis~~ described in this subsection (2)(c). This monthly
10 compensation ~~shall constitute~~ constitutes a minimum wage and ~~shall may~~ not be less than ~~\$635~~ \$986 a month
11 beginning January 1, ~~1990~~ 2006.

12 (3) The minimum wage provided in subsection (1) excludes the value of tips received by the employee
13 and any special provisions for a training wage."

14
15 NEW SECTION. Section 6. Repealer. Section 39-3-409, MCA, is repealed.

16
17 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2005.

18 - END -